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भारतीय विधिज्ञ परिषद्
BAR COUNCIL OF INDIA

(Statutory Body Constituted under the Advocates Act, 1961)

21, Rouse Avenue Institutional Area, New Delhi - 110 002

BCI:D:4800/2019

Date: 30.09.2019

To,

Hon'ble Mr. Narendra Modi Ji,
Prime Minister of India,
7, Race Course Road,
New Delhi-110001

Sub.: Request to exclude the Legal Education leading to Legal Profession and Centres of Legal Education from the purview of "HIGHER EDUCATION COMMISSION OF INDIA (REPEAL OF UNIVERSITY GRANTS COMMISSION) Bill, 2019, as it infringes/encroaches upon and offends, the Advocates Act 1961.

Esteemed Sir,

The Higher Education Commission of India (Repeal of University Grants Commission Bill) 2019, which is likely to be placed before the Cabinet is aimed at taking away the very important functions of the State Bar Councils and Bar Council of India provided under the Advocates Act, 1961.

The Legal Education leading to Legal Profession is regulated by the Bar itself. Long back in the year 1961, the Advocates Act was passed by the Parliament on the report of Law Commission. The experts had realized that the regulation of Legal Education upto graduate level (which qualifies the law graduate to become an Advocate) should be the sole domain of the Bar Councils.

Esteemed Sir,

The proposed Higher Education Commission of India (Repeal of University Grants Commission Bill) 2019 is certainly going to protest the entire Legal Fraternity against this Bill as some provisions of it directly infringe and encroach upon the very important and relevant provisions of Advocates Act, 1961.

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Esteemed Sir,

FATE OF SIMILAR PROPOSED LEGISLATION WHEN MR. KAPIL SIBAL WAS THE H. R. D. MINISTER

The Council has said that this draft Bill is a replica of the Bill drafted by Congress Ministry while Mr. Kapil Sibal was the Hon'ble H.R.D. Minister. Certain bureaucrats sitting in the Ministry are hands in gloves with a handful of so called law teachers, who are acting as agents of these bureaucrats. They have been unsuccessfully trying to take away the functions of the Bar Councils under the Advocates Act by hook or by crook. They have a hidden agenda to rule over the legal education of the country. The Advocates Act was passed in 1961 after thorough consideration and the functions to deal with this education leading to legal practice was entrusted to the Advocates and to their representatives.

AGITATION ON ROADS BY ADVOCATES IN 2012:-

Mr. Kapil Sibal had to withdraw the Bill because the Advocates throughout the country were compelled to come on roads in the year 2012. The courts were closed for two days and lawyers went against the congress government. Result came in the year 2014.

LEGAL EDUCATION COMMITTEE OF B. C. I. IS MORE POWERFUL AND COMPETENT THAN ANY OTHER BODY OR COMMISSION FOR LEGAL EDUCATION

Esteemed Sir,

Bar Council of India has a Legal Education Committee (a statutory Committee) which lays down the norms and standards of Legal Education. This Legal Education Committee of Bar Council of India is headed by a former Judge of Supreme Court and its 2 Co-Chairmen are two sitting Chief Justices of High Courts. Apart from them, it has 5 sitting Judges of different High Courts, 7 Vice-Chancellors of different Law Universities, 2 Law Deans (1 from Symbiosis Law School, another from Ambedkar Law University, Chennai). The Attorney General for India and the Solicitor General of India are its ex-officio Members. The Union Law Secretary, the Chairman of University Grants Commission (U.G.C.) are also the Members of Legal Education Committee of B.C.I. Only 5 members of Bar Council of India and 4 members of State Bar Councils are its Members.

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So, NO other commission or body could be more competent or efficient for legal education than the Legal Education Committee of Bar Council of India. For Professional studies of LLB the so called Higher Education Commission is nothing in comparison to the Legal Education Committee of Bar Council of India. Moreover, we cannot tolerate the interference of any outsider in the matter of regulation of Legal Education. We have involved Hon'ble Judges, Senior and eminent advocates, Jurists, noted law professors and educationists of the country.

PREAMBLE OF THIS DRAFT BILL AT PARA 4 PROVIDES ONLY FOR ESTABLISHMENT OF THE HIGHER EDUCATION COMMISSION OF INDIA BY WAY OF REPEALING THE UGC ACT 1956.

Esteemed Sir,

It is pertinent to mention that the impugned bill's preamble as stated above also shows that this draft bill is not a Bill to repeal the Advocates Act, 1961. However, the manner and the mode by which the provisions in the Advocates Act, 1961 are being sought to be overridden by way of indirect and almost backdoor insertion into the body of this draft is totally unacceptable to us.

It is furthermore mentioned that the law makers had clearly differentiated between "General Higher Education" and "Professional Higher (Legal) Education" and in fact that was the reason why the relevant provisions relating to legal education was inserted in the Advocates Act, 1961 even though the UGC Act dealing with all other Higher Education issues was already in existence since 1956. Therefore, the intention of the law makers was absolutely clear that Professional Legal Education and General Higher Education have to be kept in two separate frames and the authorities/bodies stipulating and laying down the standards of such education have to be separate too. In fact it is in this light that the Advocates act, 1961 specifically empowered the Bar Council of India by way of Section 6 & 7 (1)(h)&(i) not only to promote legal education and lay down the Standards of Legal Education in consultations with the Universities in India imparting such education and the State Bar Councils and also to recognize Universities whose degree in law shall be a qualification for enrolment as an Advocate.

- 4 -**OFFENDING PROVISIONS OF THE DRAFT BILL.**

Esteemed Sir,

Now upon perusing Sections-1, 2, 26 and 31 of the DRAFT BILL it is observed that the language that has been used while framing the section of the draft Bill states the following:-

Section-31:-

that Notwithstanding anything contained in the Architects Act, 1971[20 of 1971] and the Advocates Act, 1961[25 of 1961], the provisions of this Act shall apply to any matter concerning the determination, co-ordination, maintenance of standards in, and promotion of higher education and research

Provided that nothing contained in this section shall be construed as restricting the power of the Bar Council of India to specify standards of higher education concerning practice in courts:

A perusal of the above referred section 31 of the Draft Bill makes it absolutely clear that under the garb and disguise of this present draft bill the basic and inherent power of the Bar Council of India as envisioned by the law makers by way of section 7 of the Advocates Act referred above has been sought to be curtailed.

It is thus prayed that in Section 31, of the draft Bill, the word "Advocates Act, 1961" is required to be deleted.

Most importantly this Draft Bill has to exclude from its ambit all/any centre/s of Legal Education as well as all the Deemed as well as State Universities imparting and dealing with the Legal Education from the ambit of Higher Education Commission of India (Repeal of UGC) Act, 2019. Presently, Section 2 (d) of the Draft Bill defines "Higher Educational Institution to mean a University or an institution or a college, affiliated to a university, including the institutions or colleges which have been granted power to award degrees/diplomas by the Commission.

It is submitted thus this Bill shall require a clear mention / stipulation in the definition clause 2 (d) of the draft bill that the said section excludes the Centers of Legal Education, Law Colleges and all the Universities dealing with the Legal Education which have been/may be in future be granted power to award law degrees by Bar Council of India to grant law degrees.

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Upon perusing other relevant provisions of this proposed Bill we find that Section 26 of the Draft Bill also aims to override provision of the Advocate's Act 1961 which empower the Bar Council of India with certain duties/functions towards the Legal Education and Legal Profession.

The said sections reads as follows:-

"26. Act to have overriding effect:

The provisions of this Act shall have overriding effect notwithstanding anything inconsistent there with contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

It is humbly submitted that a proviso is required to be inserted to this Section whereby Advocates act and the Bar Council of India may be exempted from the ambit of this Section.

Thus, it is humbly prayed that above mentioned issues and many more issues which are not being specified in our letter need to be addressed.

This will lead to serious injustice to the legal fraternity, which would be difficult for the Bar to accept. Any Act should not and cannot override any of the provisions of the Advocates Act.

We are sure that the bureaucrats and "Babus" have put our Hon'ble Prime Minister, Hon'ble H. R. D. Minister, and our Hon'ble Law Minister in dark and got this bill drafted. After coming to know the truth our beloved Hon'ble Prime Minister Modi Ji, Hon'ble Mr. Amit Shah Ji and our other Hon'ble Union Ministers will never allow any such step or Bill which could affect the Advocates Act, 1961. Our top most guardians will not allow anyone to annoy the Advocates of the country. The lawyers are always with our Modi Ji and the present government.

OUR PRAYER: -

Therefore, we the Advocates of the country humbly pray to your goodself to make the following changes in the draft Bill:-

"1. Short title and commencement-

(2) This Act is applicable for all higher education institutions established, under any Act of the Parliament, (except Centers of Legal Education,

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Law Colleges and all the Universities dealing with the Legal Education) as also excluding Institutions of National Importance so notified by the Government, Act of State Legislature and to all Institutions Deemed to be Universities so notified by the Government.

2. **Definitions-**

- (d) *"Higher Educational Institution" means a University or an institution or a college, affiliated to a university, including the institutions or colleges (except Centers of Legal Education, Law Colleges and all the Universities dealing with the Legal Education) which have been granted power to award degrees/diplomas by the Commission.*

26. **Act to have overriding effect-**

The provisions of this Act shall have overriding effect notwithstanding anything inconsistent there with contained in any other law for the time being in force (except Advocates' Act, 1961) or in any instrument having effect by virtue of any law other than this Act.

31. **Repeal and Savings-**

- (2) *Notwithstanding anything contained in the Architects Act, 1972 [20 of 1972] and the provisions of this Act shall apply to any matter concerning the determination, co-ordination, maintenance of standards in, and promotion of, higher education and research."*

Note-Word Advocates Act, 1961 has been deleted from Sub-Section-2.

In this way, there will be no need of the following proviso to Section 31(2) i.e. *"Provided that nothing contained in this section shall be construed as restricting the power of the Bar Council of India to specify standards of higher education concerning practice in courts."*

Hence, the same may be deleted.

Esteemed Sir,

Last year when this Bill came under the public domain, we made a detailed representation to our Hon'ble Prime Minister and Hon'ble Amit Shah Ji and we also approached Late Arun Jaitley Ji and Hon'ble Ravi Shanker Prasad Ji and wrote to our Hon'ble Prime Minister and the matter was dropped. Regretfully, again, without excluding the Advocates Act, 1961 and Centres of Legal Education, the Bill has been drafted.

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In this regard the Bar Council of India held its meeting on 28th September, 2019 and passed the following resolution: -

"Resolution Dated 28th September, 2019

The Council has considered the matter with regard to the offending provisions of proposed draft Higher Education Commission of India (Repeal of University grants Commission Bill) 2019. It is relevant to note that last year (in the year 2018) also a similar Bill was proposed to be placed before the Cabinet.

The matter with regard to the Constitution of a Commission for regulation of the entire education system is roving in the minds of the bureaucrats sitting at the centre since the year 2012-2013. While Mr. Kapil Sibal was the HRD Minister, the Congress Govt. under the leadership of Mr. Kapil Sibal (in HRD) wanted to take away the functions of State Bar Councils and BCI provided under the Advocates Act, 1961 by the Parliament. Mr. Sibal had initiated the said move to form Higher Education Commission because he was hostile to the Bar Councils. The said move of Mr. Kapil Sibal was strongly opposed by the lawyers of the country. The Lawyers came on roads and ultimately the congress govt. was compelled to drop the idea of bringing any such Bill. Not only that, Mr. Sibal had to be shifted from the Ministry of HRD to some other ministry because of the pressure mounted by the lawyers of the country.

It is to be noted that again in 2018, a similar Bill was proposed in the garb to repeal of University Grants Commission, but the main idea was to take away the functions of all the regulatory bodies including the Bar Councils.

The Bar Council of India and all the State Bar Councils held their Joint Meetings and decided to oppose the said move of HRD Ministry. The agitation programs were chalked out. One day's token protest was also organized throughout the country.

It is not out of place to mention that the Hon'ble Chairman had written a letter to the Hon'ble Prime Minister and due to interference of Hon'ble Prime Minister, Hon'ble Amit Shah Ji and Union Law Minister Mr. Ravi Shanker Prasad as well as Late Shri Arun Jaitley, the proposal was dropped.

It appears that the Ministry of HRD has again drafted the same or similar Bill namely Higher Education Commission of India (Repeal of University grants Commission) Bill 2019 and the said Bill is likely to be placed before the cabinet in near future.

The Council has thoroughly discussed and deliberated over the issue and as resolved earlier, certain provisions of the Bill totally offend the rights, interests and privileges of the advocates and their statutory bodies provided under the advocates Act, 1961.

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The Centres of Legal Education and the Legal Education (leading to the legal profession) cannot be regulated by any other Authority except by the Bar and the Bar Councils.

The proposed Bill is an attack and invasion on the authority and independence of the Bar.

The Council is holding its meeting today in the premises of National Law of India University, Bengaluru which is one of the top ranking Institution of legal education not only in India but in the world. The Council intends to convey to

Government and all the Hon'ble Ministers, the Hon'ble Members of Parliament that this Institution (NLSIU, Bangalore) was established not by any Government or any HRD, but it was established by the Bar Council of India long back in the year 1986 and due to able management of BCI it has still maintained its glory uptil now.

The structure of Legal Education Committee of Bar Council of India is unparallel. There cannot be any Commission which could compete with the high powered statutory committee constituted by the BCI.

Therefore, the Council reiterates and again resolves that the Indian Bar cannot tolerate any interference or encroachment over their functions relating to regulation of legal education or legal profession. The Council resolves to request to the Hon'ble Prime Minister and all the Hon'ble Union Ministers that probably the Govt. is being mislead by either some of the bureaucrats or some Babus sitting in the different departments of the ministries.

Accordingly, the Council resolves as follows:-

- 1. A Joint meeting of all the State Bar Councils with Bar Council of India to be held in 3rd Week of October, 2019.*
- 2. A 5-member delegation of Bar Council of India is to meet Hon'ble Prime Minister, Hon'ble Minister for HRD, Hon'ble Minister for Law and Justice, Hon'ble Minister of Finance and all other Union Ministers to handover the memorandum and make them acquainted with the resentment and views of the Bar in this regard.*
- 3. In case, no positive response comes forward from the Govt.'s side, the council resolves to first undertake "a one day abstention" of the courts throughout the country as a token of protest to be observed on 21st October, 2019.*

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4. *If the grievances of the lawyers are still not redressed and considered positively, the Council resolves to hold a "huge protest Rally" in all the State capitals as well as at Delhi on 8th November, 2019 and thereafter, the lawyers from all parts of the country will assemble in Delhi and Gherao the Parliament during winter session.*
5. *It is further resolved that all the State Bar Councils be requested to direct the Bar Associations to handover a memorandum to the concerned/local members of Parliament with a request to raise the issue before the Government and to take necessary steps for exclusion of the legal education/centres of legal education from the purview of Higher Education Commission of India (Repeal of University grants Commission) Bill, 2019.*
6. *It is further resolved to reiterate the demands for Lawyers made in February, 2019 for the Welfare of Advocate, which remain unfulfilled.*
7. *The demand of bringing a concrete Legislation for protection of Advocates has not yet been considered by the Govt.*

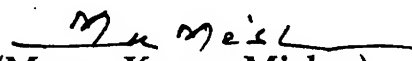
It is further resolved that the Council will be apprised of the latest update from time to time after the delegation meets the Hon'ble Ministers. If need be the Hon'ble Chairman is hereby authorized to make necessary changes in the agitation programs.

Resolved Accordingly."

Accordingly, we pray your goodself to consider the grievances of Advocates and Bar Councils and issue necessary directions to make desired changes mentioned in this representation and exclude the Legal Education and Advocates Act, 1961 from the preview of the Higher Education Commission of India (Repeal of University Grants Commission) Bill, 2019.

A 5-Member delegation of the Council would like to meet your goodself at the earliest possible time. Kindly direct the office to fix an appointment and to convey it to us.

Obliged!


(Manan Kumar Mishra)
Chairman
Bar Council of India